

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.665 of 2011

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C seeking to quash all further proceedings in FIR No.383 of 2010 dated 05.12.2010 on the file of Abids Raod Police Station, Hyderabad, registered for the offences punishable under Sections 418 and 420 IPC.

The second respondent-*de facto* complainant filed a private complaint alleging the offences punishable under Section 138 of the Negotiable Instruments Act (for short, 'the Act') saying that the first petitioner/A1 has issued cheque bearing No.126332 dated 23.11.2006 for Rs.22,000/- having already closed the bank account and thereby committed the offence.

The allegations, in brief, are as follows: The first petitioner/A1, who is chit subscriber of the second respondent chit fund company, and petitioners 2 and 3 are said to be the guarantors to the chit, which is being subscribed to by A1. The transaction of the chit is that A1 said to have issued the cheque in question for future liability. However, the chit period is completed by December 2000 and as a matter of fact, A1 has issued a notice to the second respondent company on 19.10.2001 stating that the blank cheque issued by A1 to the second respondent company should be presented for encashment before 30.10.2001, since he is intending to close the bank account on 31.10.2001. In spite of such notice, which admittedly was received by the Manager of the second respondent company, five years thereafter the said cheque was presented for encashment and the same was returned dishonoured with an endorsement "Account closed". The second respondent filed a private complaint under Section 138 of the Act. The learned XIX Additional Chief Metropolitan Magistrate, Hyderabad, has taken on file as C.C. No.320 of 2009. After full-fledged trial, by

judgment dated 19.07.2010, the learned XV Additional Judge-cum-XIX Additional Chief Metropolitan Magistrate, Hyderabad, acquitted the accused holding that the accused/A1 has not committed the offence as alleged. Thereafter, the present complaint is filed based on the very same cheque.

A perusal of the record clearly shows that the second respondent company has filed a false complaint with the police, more particularly, since on the basis of the same cheque, they previously filed a case under Section 138 of the Act, and in that the specific contentions now raised by the petitioners were raised and were answered with reference to the evidence of the Branch Manager of the second respondent company. A perusal of the above said judgment dated 19.07.2010 in C.C. No.320 of 2009 clearly shows that the cheque, which is now the subject matter of private complaint, resulting in registering of the crime was before the learned XIX Additional Chief Metropolitan Magistrate, and the Court has categorically held that the said cheque has not been issued and that it was a blank cheque given to the second respondent company, and in spite of there being a specific intimation from A1 of not to present the cheque for encashment subsequent to 31.10.2001, after five years, the second respondent has presented the cheque with a dishonest intention and as corollary thereto the cheque was returned on the ground that the account has been closed. A perusal of the judgment in C.C.No.320 of 2009 and the present crime clearly shows that both are in respect of the very same cheque pertaining to the very same account. Having been unsuccessful in C.C. No.320 of 2009, the second respondent company has filed the present complaint, which cannot be allowed to continue, and if investigation is carried out, it amounts to travesty of justice. There is absolutely no material in the complaint so as to justify continuation of the crime registered against A1, who has been successful in proving his innocence during the trial in C.C.No.320 of 2009 that the said cheque is no more a valid enforceable instrument,

since it was issued in December 2000, and the second respondent company was specifically called upon to present the said cheque before 30.10.2001, since A1 is intending to close his bank account by 31.10.2001. In that view of the matter, it is a fit case to quash all further proceedings in FIR No.383 of 2010.

In the result, this Criminal Petition is allowed quashing all further proceedings in FIR No.383 of 2010 dated 05.12.2010 on the file of Abids Road Police Station, Hyderabad.

Miscellaneous Petitions pending, if any, in this Criminal Petition, shall stand closed.

M.S.K.JAISWAL,J

Date: 28.08.2015
MVA

HON'BLE SRI JUSTICE M.S.K. JAISWAL

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